

March 27, 2008

Mr. Kirkpatrick called the regular meeting of the Union Township Planning Board/Board of Adjustment to order at 7:00 p.m. The Sunshine Statement was read.

Members Present: Mr. Mazza, Mr. Bischoff, Mr. Martin, Mr. Taibi, Mr. Badenhausen, Mrs. Corcoran, Mr. Ryland, Mr. Ford, Mr. Kirkpatrick

Members Absent: Mr. Walchuk

Others Present: Atty. Mark Anderson, Carl Hintz, John Reymann, Ronald Lai, Stephen Souza, Atty. Jeffrey Lehrer, Robert Clerico, David Krueger, Mike Sroka, Atty. Lloyd Tubman, Elizabeth McKenzie, Cyrus Apgar, Andrew Sujet

Toll Bros. Block 11, Lot 8, Rupell Road, 7 Bank Street: Memorialization of Resolution #2008-002: Mr. Bischoff made a motion to memorialize the Resolution: Mrs. Corcoran seconded the motion.

Vote: Ayes: Mr. Bischoff, Mrs. Corcoran, Mr. Mazza, Mr. Martin, Mr. Taibi, Mr. Badenhausen, Mr. Ryland, Mr. Ford, Mr. Kirkpatrick

Mr. Kirkpatrick announced that the **Perryville Group LLC Resolution** would not be memorialized tonight. The matter was rescheduled for the April 1, 2008 Workshop.

P.S. Construction: Block 22, Lot 27, 22 Race Street, Preliminary Major Subdivision: Cont'd. from February 28, 2008. Atty. Jeffrey Lehrer apprised the Board of the status of the subdivision that includes sixteen residential lots, as well as a lot for the detention basin. A Lot-Disturbance Plan had been requested at the last Hearing. Mr. Lehrer said the Board also asked that COAH issues be resolved. Revised Plans, including a Storm Water Management Plan, were submitted on March 17, 2008. Last week, he had met with Messrs. Mazza, Kirkpatrick, Carl Hintz and Mary Beth Lonergan to discuss COAH issues. Two options were discussed. One option was to construct a dwelling with two accessory apartments on a lot (27.04) which is owned by his client and was previously approved. The other option was to refurbish/rehabilitate the Milligan farmhouse, Block 22, Lot 20, with up to four units. Atty. Lehrer said his client would be responsible for two of those units. The remaining two would be designed in such a manner that the Township could finish them to comply with COAH Regulations. Mr. Kirkpatrick asked that plans for the accessory apartment proposal and the Lot Disturbance Plan be shown.

Atty. Lehrer asked that Mr. Clerico come forward to address Board Professionals' concerns in response to the March 17, 2008 submittal. Mr. Clerico referenced Mr. Hintz's letter. He said there was an issue with the planting of trees in the conservation area and that needed to be discussed with the Board.

He also said a waiver was being sought regarding compliance with RSIS Standards for cul-de-sacs, since the Standards apply to subdivisions of 24 or more lots. Mr. Clerico said applicant will comply with items listed in Mr. Ferriero's letter. Mr. Clerico addressed Dr. Souza's concern. He said the water-treatment facility had been discussed at the last Hearing. In response, Mr. Clerico had prepared a Stormwater Quality Treatment Options Exhibit, dated March 27, 2008. It was marked A-10. There were two Options, "A" and "B". Mr. Clerico explained both Options. He also presented an Exhibit, revised Sheet 5 of the 16-sheet set of Plans that was originally submitted. The Plan reflects a smaller footprint of the proposed dwellings. Atty. Anderson said that Exhibit would not need to be marked. Mr. Clerico addressed a concern raised by Mr. Kirkpatrick about disturbance of the lot on which the COAH Units are proposed. Mr. Clerico had prepared an Exhibit entitled COAH Unit Map, dated March 27, 2008, addressing the plan. It was marked A-11. Mr. Clerico provided details. The Map shows a proposed four-bedroom dwelling, a proposed three-bedroom attached accessory apartment, and a proposed garage with a two-bedroom accessory apartment on the second floor. Atty. Lehrer noted that elevations are shown on the Exhibit which was marked A-12. The Exhibit also shows schematics of the proposed dwellings. The dwellings would be located on Block 22, Lot 27.04, which was part of an approved three-lot Final Major Subdivision. Mr. Kirkpatrick emphasized the importance of conservation easements being shown on the Final Map.

Mr. Hintz said a third COAH option would have been to have the dwellings on the proposed sixteen-lot subdivision. Atty. Lehrer said his client preferred the aforementioned location. Mr. Hintz mentioned that handicapped accessibility is not required for the apartment above the garage. Mayor Mazza asked if an emergency exit was required for that apartment. Mr. Hintz understood that was not necessary. One COAH unit will be handicapped accessible.

Dr. Souza mentioned that the proposed unit would be within the outermost 150 foot buffer of the Category I Stream. Mr. Clerico said applicant had NJDEP approval. It was a condition imposed by the Planning Board at the time P.S. Construction obtained approval of the Three-Lot Subdivision. Mayor Mazza asked if there was adequate area for emergency vehicles to turnaround in the cul-de-sac. Mr. Clerico explained. Mr. Mazza asked about the detention basin in the cul-de-sac. Dr. Souza didn't think that would be possible. Mr. Kirkpatrick asked about variances for the COAH Units. Mr. Hintz indicated variances would be required. Atty. Anderson said the issue requires checking. Mr. Bischoff asked Mr. Clerico if Stormwater Management issues had been addressed. Mr. Clerico replied in the affirmative. Dr. Souza indicated his preference for Option B He felt it would be easiest to maintain. Mr. Bischoff asked if all items in Dr. Souza's letter of March 17, 2008 had been satisfied. Mr. Clerico said that had been done. Dr. Souza mentioned soil testing that should be done after the area within the infiltration basin had been excavated and filled. It must be determined that the basin would evacuate within 72 hours. He explained the procedure to be followed if the area did not evacuate in that time.

Mayor Mazza asked the elevation of the junkyard and if it would be visible from the subject property. Mr. Clerico said it would be most visible during winter. He did not know the elevation. Mrs. Corcoran asked about garbage removal from the site. Atty. Lehrer said that David Krueger was available for testimony. Mr. Krueger said there was farm and household debris. A licensed contractor removed the debris. The site was not regulated; therefore the NJDEP was not involved. Eight trees had been removed. Applicant will comply with the Ordinance regarding replacement. There are tires and metal to be removed. Mayor Mazza asked how the area would be filled. Mr. Krueger said that any soil needed will be added and the area will be seeded. There were two pits. One had an approximate 40' x 60' area and the other was about half that size. There was a manifest to quantify the amount of debris removed. Mrs. Corcoran asked that information be provided. Atty. Lehrer said he would forward information to the Board secretary. Mayor Mazza asked the number of homes that will require retaining walls. Mr. Clerico said those on Lots 6 through 9 are designed with the walls. The walls are about 5-feet high. That information will be shown on the building plans.

Mr. Kirkpatrick asked for questions from Professional's or the Public. Henry Lewis, developer of Lakeside Estates, asked if the Board had any control over the location of COAH Units. Mr. Lewis also mentioned the detention basin and the proximity to limestone areas. Mr. Kirkpatrick said Limestone Investigations had been done. He also said a developer is required to provide the Units and the Township can decide where the Units are located. Mr. Kirkpatrick said his personal opinion is that the proposed COAH Units would not have a negative impact on property values. Mike Sroka had a question about the impact of the farm dump on nearby wells. He lives upstream from the dump. Mr. Sroka would like to have soil testing done of the area. Mrs. Corcoran asked if there was someone who had overseen removal of the debris and could provide testimony. Atty. Lehrer said the developer, Peter Streletz, could provide that testimony. Mr. Streletz came forward and was sworn by Atty. Anderson. Mr. Streletz had stopped by from time to time to check on the status of the cleanup. He said there was steel and metal, carpeting, bottles, regular household garbage. The site was excavated to the depth where virgin soil was present. Mr. Streletz thought that dumping had ceased in the 1990's. Mr. Streletz was asked to have three surface soil samples taken from the two pits and provide results to the Board. Mr. Taibi asked about the maintenance of the environmentally sensitive areas. Atty. Lehrer said the Homeowners Association would be responsible.

Mr. Kirkpatrick announced that the Public Hearing would be closed. Conditions for approval were discussed as follows: Applicant must take three soil samples from the garbage pit areas; samples are to be analyzed and reports submitted to the Board, compliance with issues raised by Board Professionals; monitoring of the discharge point at Race Street and the culvert and repair or replacement of the system if it failed, for a period of 5 to 10 years; COAH Units to be constructed and CO's to be issued for all the Units prior to a zoning permit being issued for the 8th dwelling;

final plat shall show all conservation easements for the entire project, or individual lots, with a draft provided to the Board for review; no building permits shall be issued until the easements are filed with the Hunterdon County Clerk; Option B for Water Quality Feature for Road Apron; compliance with the Tree Ordinance; Homeowners Association to be responsible for maintenance of open space areas and the detention basin; conservation easement areas shall not be mowed prior to July 15; and any variance required shall be approved prior to submission of the Final Major Subdivision application.

Mayor Mazza made a motion to approve the Preliminary Major Subdivision, subject to the above-listed conditions. Mr. Ford seconded the motion.

Vote: Ayes: Mr. Mazza, Mr. Ford, Mr. Bischoff, Mr. Martin, Mr. Taibi,
Mr. Badenhause, Mrs. Corcoran, Mr. Ryland, Mr. Kirkpatrick

Apgar: Block 19, Lot 7, 33 Driftway: Interpretation & "C" Variance: Public Hearing: Atty. Lloyd Tubman, representing Mr. Apgar, said her client is seeking a Use Variance. Messrs. Bischoff and Mazza recused themselves. Ms. Tubman gave a brief overview of the application. An approval has been obtained from the Hunterdon County Health Department. The existing dwelling and the barn, which is the subject of this application, are located on about 3.8 acres and is in the Conservation Management District. The property had previously been in the Country Residential District. Atty. Tubman asked Cyrus Apgar to come forward to give a history of the barn. Mr. Apgar was sworn by Atty. Anderson. Mr. Apgar had obtained a permit in 1989 to reconstruct an historic barn that was taken down from the Cooks Cross Road/Route 579 area. Mr. Apgar had converted the barn into a residence where he could live. It was intended that the main dwelling was to have been occupied by Mr. Apgar's parents. That dwelling is presently occupied by an employee of Mr. Apgar and no one lives in the converted barn. The property is surrounded on two sides by Hoffman Park and the other sides have houses within 100 and 300 feet. He had not had complaints from any neighbors about the two residences. Mr. Apgar displayed a plan. That plan had been submitted as part of the original application. Mr. Kirkpatrick asked Mr. Apgar how he would feel about using the converted barn as a low or moderate housing unit. Mr. Apgar said he would like to use the original dwelling for that purpose and he would like to live in the barn. Atty. Tubman said the barn would have to be reconstructed for a residence.

Atty. Tubman asked Elizabeth McKenzie to come forward. Ms. McKenzie, a Professional Planner, was sworn by Atty. Anderson. She stated her credentials. Mr. Ford made a motion to accept Ms. McKenzie's credentials. Mrs. Corcoran seconded the motion.

Vote: All Ayes

Ms. McKenzie said there are numerous non-conforming issues besides the two residential dwellings on the site. They include lot size, setbacks, impervious surface coverage. She said there are special reasons why the variances should be granted.

Ms. McKenzie acknowledged that Mr. Apgar should not have converted the barn into a residence. She said, however, that granting a variance for that structure and offering one of the dwellings as an affordable unit would be a special reason. The Unit would be added to the Township's Affordable Housing Program. She said to get a three-bedroom affordable unit would be desirable for the Township and to have the barn as a residence for Mr. Apgar or another person or two would not create overcrowding. Ms. McKenzie said the barn has been nicely restored and promotes the goals of the Master Plan pertaining to historic preservation. She cited the remoteness of the property and that it is well maintained. Ms. McKenzie apprised the Board of the height of the barn and said a variance would be required. She said there are eight purposes of the MLUL that would be promoted by granting the requested variance.

Atty. Tubman asked if there were questions for Ms. McKenzie. Mr. Kirkpatrick asked for questions from the Board. Mrs. Corcoran asked if the property was sold, what would happen with the COAH Obligation. Ms. McKenzie said the Obligation would continue. She proposed a 30-yr. deed restriction. The property would be affirmatively marketed when the current tenants moved. Mr. Ryland asked what would happen at the end of the 30 years. Ms. McKenzie said it could be converted to a market unit after that time. Mrs. Corcoran requested more information about what would happen after 30 years. Ms. McKenzie said a condominium regime could be created on the lot where each of the dwellings was sold; however, the land would be under common ownership. She said that would be rare, more than likely it would be retained as a rental unit. Ms. McKenzie did not believe that removal of the unit would have a negative impact on the Township's COAH Obligations. Atty. Anderson had a question about the property being on a private road and not abutting a public street. Ms. McKenzie said notices had included that variance request. Atty. Anderson asked about the proposed moderate income unit and COAH regulations that mandate the Township make that up with a low-income unit on the site. Ms. McKenzie said a waiver can be obtained to allow for the low-income unit to be placed on another site within the Township. Mr. Anderson said two steps are required. The Township will have to provide the low-income unit somewhere and they will have to apply for the waiver. A discussion was held between Atty. Anderson and Ms. McKenzie about the current tenant staying in the proposed COAH Unit and how that occupancy complies with affirmative marketing requirements. Ms. McKenzie felt that as long as tenants are income qualified COAH would probably look favorably on the concept. Mr. Anderson felt that a waiver would be required from COAH.

Atty. Anderson asked about the proposal for management. Ms. McKenzie said that would usually be the Township's responsibility. They are to have an administrative entity for all COAH units with the Township. Atty. Mark Anderson did not agree entirely that it was the responsibility of the Township. Applicant had made the proposal that it was the Township's responsibility. Atty. Anderson and Ms. McKenzie said that property owner can be charged fees. Mr. Anderson said Mr. Hintz could address the management issue.

Atty. Anderson asked if penalties had been assessed to applicant since he had converted the barn into a residence without proper permits. Atty. Tubman said Mr. Apgar had paid a fine. Mr. Anderson said it would be helpful for the Board to have that information. It would be important for them to know that people should not proceed without obtaining permits and then come to the Board for dispensation. Ms. McKenzie agreed. She said, however, that one of the Units will be deed-restricted for COAH purposes for a 30-year period. Mr. Badenhausem had understood that the current tenant of the proposed COAH Unit was not paying rent. He wanted to know if the tenant was paying rent at the market value, would he still be qualified as income eligible. Ms. McKenzie explained. She was quite sure the tenant would either qualify for low or moderate income eligibility. Ms. McKenzie said the tenant must be qualified and the amount of rent to be charged must be established and cannot exceed a certain amount.

Mr. Ryland asked about maintenance of the COAH unit. Ms. McKenzie said, for the most part, the landlord is responsible. Mr. Ryland asked what would happen if Mr. Apgar sold the property. Ms. McKenzie said that could be a problem. She emphasized that is why it is important for the Township to have a Housing Officer and have administrative oversight of COAH Units. Mr. Ryland wanted to know if that should be considered during the approval process. Ms. McKenzie said the maintenance issue could be imposed as a condition of any approval. The Resolution of approval could require that the Housing Officer be notified when the Unit was vacated. Atty. Tubman said she didn't think most property owners would want the Unit to be vacant.

Mr. Taibi had a concern about the size of the barn and the potential for utilizing the building for several occupants. It was an especial concern if Mr. Apgar sold the property. Mr. Taibi was told that the septic system approved by the Hunterdon County Board of Health made allowance for a maximum of five bedrooms. The proposed COAH Unit has three bedrooms. Mr. Taibi asked if there was COAH math that determines eligibility. Ms. McKenzie explained. The rent is approximately 30% of the tenant's monthly income.

Mr. Badenhausem asked about property taxes. Would they go down? Ms. McKenzie didn't think so. They would probably increase. Mr. Kirkpatrick said the barn would be taxed at market value and the COAH Unit would be taxed at the moderate-income value.

Andrew Sujet, an owner of a large parcel on the Driftway, voiced a concern about septic leaching onto his property. Mr. Kirkpatrick asked that Mr. Sujet be sworn. This was done by Atty. Anderson. Mr. Sujet had a concern about two dwellings on one lot, taxes and the COAH Unit, and maintenance of the Driftway. He said he had plowed the Driftway for over forty years. Mr. Apgar said he paid back taxes on the barn/residence and now pays approximately \$15,000 per year. He also said the new septic system would eliminate problems mentioned by Mr. Sujet. Ms. McKenzie addressed the COAH issue, including the two dwellings on one lot.

She said the Board had just approved an application that included placement of two dwellings on one lot. She felt the Township might go in that direction in order to accommodate their COAH Obligations. Mr. Kirkpatrick said there are two issues. One is maintenance of the Driftway and the second is runoff. Mr. Kirkpatrick thought a dry well could eliminate the runoff from the barn roof. Mr. Kirkpatrick also said that zoning had been changed in the area because of nitrate concerns. He said a standard septic system doesn't remove much in the way of nitrates. There are devices that can be installed between the tank and the field that reduce nitrate concentrations. That unit could be added. Mr. Sujet had concerns about COAH tenants maintaining the Driftway. Ms. McKenzie said maintenance was the landlord's responsibility. Mr. Taibi voiced a concern about setting precedents in the Township. Ms. McKenzie emphasized the uniqueness of the application. She said it would be a waste of resources to take down either of the structures. The COAH Unit will be an asset to the Township as it helps them to meet Obligations and the Barn has Historic Value. Mr. Taibi reemphasized his concerns about setting a precedent. Mr. Kirkpatrick said the special circumstances of the application should be considered when making a positive or negative decision. He also said certain conditions could be set forth in the Resolution due to the application's uniqueness. Mr. Kirkpatrick said he would not want to see multiple dwellings on small-sized lots. However, he said there may be circumstances where it would be appropriate.

Dr. Souza asked about another building on the site. Mr. Apgar said it was a doghouse. Mr. Souza also wanted to know if the well had been certified by the Board of Health. He said it was important to know if the yield from the well would be adequate for the two dwellings. Dr. Souza commented that a shared septic system is not unusual. He emphasized the importance of the septic system being maintained by one owner. If the property was subdivided, a separate system would have to be installed. Mr. Kirkpatrick said there would be a restriction that there could be no further subdivision. Atty. Tubman said her client would agree that there be no further subdivision and a deed restriction would be perpetual. Ms. Tubman also said there would be no condo either. Ms. McKenzie said that would be appropriate, since both dwellings share a well and septic system. Dr. Souza said there should be a stipulation that there be no increase in impervious surface area. The dry well to receive runoff from the barn would also be a condition.

Mr. Hintz referenced the COAH Unit and the need to qualify the present tenants for low or moderate income eligibility. He noted that when those tenants vacated the dwelling, it would have to be affirmatively marketed, unless the Board imposed another condition. Mr. Kirkpatrick understood that the Unit could be considered low-income and the reference to moderate-income could be eliminated. Atty. Anderson said "yes", with the provision that if the present tenants were qualified as moderate income they could remain. In the future, it would be strictly low-income. The issue of a Housing Administrator was discussed. Atty. Anderson said that sooner or later the Township would have to deal with the matter.

Mrs. Corcoran asked about maintenance of the Driftway to allow access to the property. She was told that since subject property is at the end of the Driftway, the owner of that property would be responsible.

Mr. Kirkpatrick asked for a motion. Mr. Taibi made a motion to approve the application. Mr. Badenhause seconded the motion. Atty. Anderson recited the conditions. The approved Unit shall be low-income, with the possible exception that if the current tenants qualify as moderate-income, they can remain; after they vacate the Unit, it shall be affirmatively marketed as a low-income Unit; the property will be permanently restricted from further subdivision or the creation of condominiums on the lot; owner would be required to maintain property so that the Unit remain tenantable; owner to notify the Township when the Unit is vacated; runoff from the barn roof be directed to a dry well; the nitrate discharge from the septic system be no greater than from a single dwelling; the barn be limited to the existing 3,240 square feet and two bedrooms; certification that the well is adequate for two dwellings; no further increase in impervious surface coverage; an inspection of the Barn would be required prior to the issuance of a Certificate of Occupancy; and a 30-year deed restriction to be recorded as part of the COAH obligation

Vote: Ayes: Mr. Taibi, Mr. Badenhause, Mr. Martin, Mrs. Corcoran, Mr. Ryland
Mr. Ford, Mr. Kirkpatrick

Mr. Kirkpatrick reviewed findings before making a decision. Setbacks are longstanding and appear to have no significant impact on adjacent property owners, the use variance is for a low-income house and will be deed-restricted accordingly, the low-income unit has the same size, appearance and amenities of a typical market unit and applicant has made a long-term commitment to maintaining the unit in that condition, The additional unit that was constructed on the site was an adaptive, functional reuse of an historic structure; impervious surface coverage was exceeded, however, applicant has offered to mitigate by recharging runoff via a dry well. Additionally, nitrate generated from the two buildings with a standard septic system could result in a degradation of downgradient water quality; however, most of the adjacent property is in public open space and is not likely to be developed; applicant has taken steps to reduce the nitrate discharge from the site below that of a conventional septic system; applicant has agreed to restrict the site against further subdivision or use as a condominium. Mr. Kirkpatrick said, that based upon those findings, he would vote yes.

Messrs. Bischoff and Mazza returned after the above action.

Public Comment/Other Discussion: Gambony: Block 19, Lot 5.01: Mr. Bischoff brought up an issue that had been discussed at the Township Committee meeting regarding the easement on the Gambony property. At one time a Master Plan Road was proposed through the property. It was the consensus of the Board to recommend to the Committee that they not vacate the easement. The easement might be used as a walking trail/horse trail at some time in the future.

Mr. Ford made a motion to recommend to the Township Committee that they not vacate the easement. Mr. Badenhause seconded the motion.

Vote: Ayes: Mr. Ford, Mr. Badenhause, Mr. Mazza, Mr. Bischoff, Mr. Martin,
Mr. Taibi, Mrs. Corcoran, Mr. Ryland, Mr. Kirkpatrick

Mr. Kirkpatrick asked for a motion to go into Executive Session to discuss the Pilot Litigation. Mr. Mazza made the motion. It was seconded by Mr. Badenhause.
(10:00 p.m.)

Vote: All Ayes, No Nays, Motion Carried

A Resolution providing for a meeting Not Open to the Public in Accordance with the revisions of the N.J.S.A. 10:A-4-12.

WHEREAS, the Planning Board of the Township of Union is subject to the Open Public Meetings Act, N.J.S.A.10: A-4-6, et Seq., and

WHEREAS, the Open Public Meetings Act, N.J.S.A. 10:A-4-12, provides that an Executive Session, not open to the Public, may be held for certain specified purposes when authorized by Resolution, and

WHEREAS, it is necessary for the Planning Board of the Township of Union, assembled in public session on March 28, 2008, in the Union Township Municipal Building, 140 Perryville Road, Hampton, NJ 08827, for the discussion of matters relating to the specific item designated above.

It is anticipated the deliberations conducted in closed session may be disclosed to the public upon determination by the Planning Board that the public interest will no longer be served by such confidentiality.

The Executive Session ended at approximately 10:45 p.m.

Mr. Bischoff made a motion to return to the regular session. Mr. Kirkpatrick seconded the motion.

Vote: All Ayes, No Nays, Motion Carried

Approval of Minutes: Mr. Mazza made a motion to approve the minutes of the March 27, 2008 Regular and Executive Session, with a correction to the Executive minutes, Mr. Ford was at that Session. Mrs. Corcoran seconded the motion.

Vote: Ayes: Mr. Mazza, Mrs. Corcoran, Mr. Bischoff, Mr. Martin, Mr. Taibi,
Mr. Badenhausen, Mr. Ryland, Mr. Ford, Mr. Kirkpatrick

Martin/Perryville Wine & Spirits: Block 12, Lot 8.04, 72 Route 173 West: Secretary had received a letter dated March 24, 2008 from Andrew Holt requesting that the current application be removed from the agenda. Atty. Anderson said it was confusing what was being sought. He said the Board should go on record that it views the application as being withdrawn.

Mr. Mazza made the motion that the Board views the application as being withdrawn.
Mr. Ford seconded the motion.

Vote: All Ayes, No Nays, Motion Carried

Mr. Kirkpatrick asked secretary to write a letter to Mr. Holt stating that his letter of March 24, 2008 had been received and in accordance with Mr. Holt's request, the application has been withdrawn.

Motion to Adjourn: Mr. Mazza made a motion to adjourn. Mr. Badenhausen seconded the motion. (10:50 p.m.)

Vote: All Ayes

Grace A. Kocher, Secretary